

**SHOALWATER BAY INDIAN TRIBE
CODE OF LAWS**

**TITLE 4A
EXCLUSION OF TRIBAL MEMBERS**

**ADOPTED JULY 12, 2006
Tribal Council Resolution No. 07-12-06-21**



Shoalwater Bay Indian Tribe
Code of Laws
TITLE 4A
EXCLUSION OF TRIBAL MEMBERS
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Shoalwater Bay Indian Tribe
Code of Laws

TITLE 4A
EXCLUSION OF TRIBAL MEMBERS

Chapter 4A.1 General Provisions

4A.1.010 Purpose

(1) This Title is enacted to provide a process for the Shoalwater Bay Indian Tribe to exercise its authority and duty to protect the peace, health, safety, welfare, property, and cultural identity of Tribal Members. The Tribe's inherent sovereign power to remove and exclude non-members from the reservation provides the Tribe with a means to protect the Shoalwater Bay Indian Tribe and the reservation community.

(2) This Title is intended to be a separate Title from Title 4 of this Code.

4A.1.020 Jurisdiction

The Shoalwater Bay Tribal Court shall have jurisdiction over all matters arising under this Title. All means necessary to exercise that jurisdiction are delegated to the Tribal Court. In the exercise of jurisdiction under this Title, if a course of proceeding is not specified, any suitable process may be adopted by the Tribal Court in keeping with the spirit of the laws of the Tribe.

4A.1.030 Who May Be Excluded

Any person who is a member of the Shoalwater Bay Indian Tribe may be removed and excluded from the territory of the Shoalwater Bay Indian Tribe.

4A.1.040 Civil Remedy

An *Exclusion Order* is a discrete civil remedy that is neither dependent upon nor necessarily connected with any criminal remedy.

The intent of exclusion is not to punish persons, but is to protect the Tribe and Tribal community by providing the Tribe with a means of civil regulation of the community's internal order.

4A.1.050 Definitions

The following terms when used in this Title shall have the meaning set forth in this section.

- a) **Child** is any person under the age of eighteen (18) years.
- b) **Exclusion** is an order denying entry onto property that is under the jurisdiction of the Shoalwater Bay Indian Tribe, including fee land.
- c) **Natural Resources** include but are not limited to fish, wildlife, shellfish, timber, water, and minerals.
- d) **Person** includes individuals, organizations, and business entities.
- e) **Proper authority** is either 1) a court order recognized as valid by the Shoalwater Bay Tribal Court or Council; or 2) permission to remove a child, granted by a parent or other person who has lawful authority to give such permission.
- f) **Removal** is the physical removal of a person from the territory of the Shoalwater Bay Indian Tribe.
- g) **Tribal Council** is the duly constituted governing body of the Shoalwater Bay Indian Tribe.
- h) **Territory** of the Shoalwater Bay Indian Tribe is all lands held in trust or subject to a restriction against alienation by the United States for the benefit of the Shoalwater Bay Tribe and all lands owned by the Shoalwater Bay Tribe.
- i) **Tribal Community** includes enrolled members of the Shoalwater Bay Indian Tribe and residents of the Shoalwater Bay Reservation.
- j) **Tribal Court** is the Shoalwater Bay Tribal Court established under the laws of the Shoalwater Bay Indian Tribe.
- k) **Tribal Law Enforcement** is any person or agency authorized by the Shoalwater Bay Tribal Council to enforce this Title.
- l) **Working days** shall include Monday through Friday of each week but excluding Saturday and Sunday and excluding any "legal holiday" as that is defined in **Federal Rules of Civil Procedure 6(a)** and other applicable federal law.

4A.1.060 Severability

If any portion of this Title or its application to any person or circumstance is held invalid, the remainder of this Title or its application of the provision to other persons or circumstances shall not be affected.

4A.1.070 Sovereign Immunity

Nothing in this Title shall be construed as a waiver of the sovereign immunity of the Shoalwater Bay Tribe, Tribal Council and other Tribal officials, agents, and employees.

Chapter 4A.2 Grounds for Removal and Exclusion

4A.2.010 Grounds for Removal and Exclusion

(1) Any Tribal Members subject to this chapter may be removed and excluded from the territory of the Shoalwater Bay Indian Tribe for any of the following reasons:

- a) Current status as a person convicted by a court of competent jurisdiction of molesting a child or of abusive sexual contact of a minor;
- b) Current status as a person convicted by a court of competent jurisdiction of a sex offense involving a minor and/or found to be a level two or three sex offender as those terms are defined under state or federal law or within, the last ten years, conviction as a level one sex offender as that term is defined under State or Federal law.
- c) Violation of the terms of his or her parole of a conviction by a court of competent jurisdiction, violation of terms of any sexual offense registration requirement. Violation or failure to comply with any court-mandated sex treatment program or violation of the terms of any civil commitment law, if such a violation could cause harm or threaten to cause harm to any child.

(2) A member may be excluded only if the conviction or violation occurred after the effective date of Title 4A.

(3) Nothing in this Title shall act to grant jurisdiction over the Shoalwater Bay Tribe, its members, or its Reservation to the State or Federal Government.

Chapter 4A.3 Exclusion Hearing, Notice

4A.3.010 Petition for Exclusion—Who May File

(1) The Tribal Council shall have exclusive authority to submit a *Petition for Exclusion* to the Tribal Court. The Tribal Council may pursue a petition for exclusion if there are reasonable grounds to believe that there is a basis for exclusion under 4A.2.010. Nothing herein shall act to require the Tribal Council to submit a petition or limit its discretion to do so.

(2) Any Tribal Member, or Shoalwater Bay Tribal Police Officer, may file a written request to the Tribal Council for the removal or exclusion of any Tribal Member who is subject to this chapter. A person requesting that the Tribal Council file a petition for exclusion is not a party to the exclusion proceeding, but may be called as a witness.

4A.3.020 Petition—Contents

A *Petition for Exclusion* from the Tribal Council shall include:

- a) The name of the person to be removed or excluded;
- b) The specific grounds, under Section 4A.2.010, for the removal or exclusion;
- c) The factual basis for the request; and
- d) The signature of the Chairperson.

4A.3.030 Notice of Hearing—Content

The *Notice of Hearing* shall include:

- a) The date, time, and place of the hearing;
- b) A statement that the person may be represented by counsel, at his or her own expense;
- c) A statement that the person may present testimony of witnesses and other evidence on his or her behalf;
- d) A copy of the petition; and
- e) A statement that failure to attend the hearing may result in an *Order of Permanent or Temporary Exclusion or Removal*.

4A.3.040 Notice of Hearing—Service

If the Court finds that the petition meets the requirements of Section 4A.3.020 and probable cause exists for excluding the person, it shall cause a *Notice of Hearing* to be served on the respondent. Service of the *Notice of Exclusion Hearing* shall be made by Tribal Police or by any person at least eighteen (18) years old and not a party to the case. If personal service fails, the order may be served by certified mail, return receipt requested, to the person's last known address. The process server shall return an *Affidavit of Service* to the Court.

4A.3.050 Defective Petition

If the Court finds that the petition does not meet the requirements of Section 4A.3.020, it shall dismiss the petition *without prejudice* and shall cause notice to be served on the petitioner stating the manner in which the petition was defective.

4A.3.060 Time of Hearing

The hearing shall be held not less than five (5) working days and not more than sixty (60) calendar days after personal service, mailing, or posting of the notice, unless continued for good cause. Notwithstanding anything in Tribal law to the contrary, if notice is posted it shall be posted in three prominent and public locations on the Reservation on a public board or notice location that is designed to be seen by members of the public. One of the three places the notice shall be posted shall include the Tribal Administration Building.

4A.3.070 Conduct of Hearing

The *petitioner* and *respondent* shall have an opportunity to present witnesses and other evidence. All evidence that is necessary and relevant to decide the case is admissible. Witnesses may be *subpoenaed* for either party upon request. Failure of the Court's subpoena power to obtain a witness' presence shall not be cause to dismiss the petition. The parties may be represented by counsel at their own expense.

4A.3.080 Standard for Decision

The Court may enter an *Order of Removal or Exclusion* if, based on the evidence presented, the Court is persuaded by *clear and convincing* evidence that:

- a) The person or entity committed an act or omission which falls within one or more grounds for exclusion under Section 4A.2.010; and
- b) That removal or exclusion is necessary to protect the health, safety, or welfare of the community.

4A.3.090 Order of Exclusion

The Court may orally advise the parties of its decision at the hearing or may issue a written opinion no later than five (5) working days from the date of the hearing. In either case, the Court shall prepare a written order and cause it to be served on both parties. A written *Order of Exclusion* shall include:

- a) The grounds for the decision;
- b) The date and time the individual or entity must remove himself or herself;
- c) The duration the order is to be in effect;
- d) A statement that any return to the territory of the Shoalwater Bay Indian Tribe in violation of the Order of Exclusion constitutes trespass and may be referred for prosecution to the appropriate jurisdiction.

- e) Whether the Tribal Police are requested to supervise the removal of the person and any belongings the person may have within the territory of the Shoalwater Bay Indian Tribe;
- f) Any circumstances under which the person may be permitted to return. For example, conditions and reasons for a return may include payments of restitution, evidence of rehabilitation, visitation of children, visitation during certain times only, Tribal Court appearances, and a limited time to return to pick up belongings; and
- g) A date by which the Tribal Court will review the order and circumstances or conditions attached, if the individual or entity requests a review, pursuant to Section 4A.4.010.

4A.3.100 Order of Exclusion—Service

An *Order of Exclusion* shall be personally served on the respondent if the respondent resides within the jurisdiction of the Shoalwater Bay Indian Tribe. Service shall be made in the manner specified in Section 4A.3.040.

4A.3.110 Continuance, Failure to Appear

The Court may—in its discretion—grant a continuance of the hearing upon request. If the respondent fails to appear at the time set for a hearing, after proper notice of the hearing has been given, the Court may enter an *Order of Exclusion*. The order shall be served on the parties in the manner provided in this Title and shall contain the information required under Section 4A.3.090.

A respondent excluded after his or her failure to appear may request a hearing to explain the reasons for the failure to appear. If the Court finds the respondent's failure to appear was for good cause, it shall reschedule a full hearing on the matter of exclusion.

4A.3.120 Order of Exclusion—Enforcement

The Court may request Tribal Law Enforcement to supervise the removal of the respondent. The person may be allowed by court order to gather any necessary belongings from the jurisdiction of the Tribe, prior to removal. If the respondent fails to voluntarily remove himself or herself with the time limit stated in the order, Tribal Law Enforcement may physically remove him or her. Tribal Law Enforcement shall use only so much force as is reasonable to accomplish the removal.

4A.3.130 Duration of Exclusion Order

The *Exclusion Order* shall remain in effect until modified or revoked by the Tribal Court following a hearing properly requested under Section 4A.4.010 or, if applicable, until the time provided on the Order itself. In the absence of a provision in the order indicating otherwise, the term of exclusion shall be presumed to be permanent subject to a right to seek *reconsideration* at any time under 4A.4.020.

Chapter 4A.4 Review Hearings

4A.4.010 Request for Hearing to Review Final Exclusion Order

The person subject to an exclusion order may request a hearing before the Tribal Court to reconsider the order and circumstances or conditions attached. The request for a hearing must be made within the time limits stated on the order and in accordance with any conditions specified in the order itself. If the request is deficient in any material way, the Tribal Court shall so notify the person within ten (10) working days of receipt of the request. The requests shall:

- a) Be in writing;
- b) Be signed before a notary public;
- c) State an address where the Tribal Court shall mail all notices and documents associated with the hearing;
- d) Explain the factual circumstances which support reconsideration of the order;
- e) State the changes to the order that they are seeking as a result of this hearing; and
- f) Be mailed to the Shoalwater Bay Tribal Court, with a copy served upon the Chairperson of the Shoalwater Bay Tribal Council. If the Tribal Chairperson receives a copy of the request for a hearing, he or she shall notify the Tribal Council and receive direction on how to proceed.

4A.4.020 Hearing to Review or Reconsider Final Exclusion Order

(1) The Tribal Court shall cause a notice to be mailed to the person and to the Tribal Council within ten (10) working days of receiving a proper and complete request for a hearing, advising the person of the date, time, and place of the hearing. The hearing shall be scheduled for a date that is within forty (40) working days of the date the notice is mailed by the Court.

(2) Any Tribal Member excluded under this Code shall have the right to file a *Request for a Hearing* to demonstrate that he or she should have the Order of Exclusion removed. Grounds for reconsideration of the Order of Exclusion shall include clearing and convincing proof that the Tribal Member is not a threat to the Tribal Community and that their status has materially changed since the original hearing such that the grounds for the original order is no longer applicable. A Tribal Member shall have a right to seek reconsideration of the original Order of Exclusion at any time notwithstanding that the appeal time of the original order has expired.

4A.4.030 Decision

The decisions of the Tribal Court on a *Review or Reconsideration of an Exclusion Order* shall be in writing and mailed to the address provided by the person within fifteen (15) working days of the hearing.

Chapter 4A.5 Emergency Removal

4A.5.010 Emergency Removals—Grounds

- (1) The Tribal Council upon a petition filed by the Tribal Prosecutor, Tribal Attorney or other designated representative and notice to the affected Tribal Member, may ask the Tribal Court for removal from the jurisdiction of the Shoalwater Bay Indian Tribe any Tribal Member subject to removal under this code upon a showing that an immediate danger to health, safety, or property exists and delay would result in irreparable harm. The Tribal Council, in its discretion and under its supervision, may allow the person to gather any necessary belongings from the jurisdiction of the Tribe, prior to removal. The Tribal Member shall have the right to seek reconsideration of such removal pursuant to the requirements of this Title.
- (2) In addition to the above, the Tribal police may issue a *Citation* notice to any Tribal Member excluding that person from the Reservation for no more than seventy-two (72) hours if the Tribal Police believe that there is an immediate danger to health, safety, or property, that delay would result in irreparable harm and that there is no other means available to protect the Tribal Community. If such a citation is issued, a hearing on the citation shall be held within the seventy-two (72) hour period by the Tribal Court on the citation upon notice to the Tribal Member excluded. The Court may at the time of that hearing rule on the Tribe's request to extend the emergency exclusion for a longer period of time. The Tribal Court shall apply the standards for the hearing under Section 4A.5.010.

4A.5.020 Notice of Opportunity to Request Hearing

The Shoalwater Bay Indian Tribe or Tribal Court shall cause a *Notice of the Opportunity to Request a Hearing* to be sent as soon as reasonable and practicable to the person removed, by certified mail, return receipt requested. The notice shall state:

- a) The grounds for removal;
- b) A statement that the person or entity may request a hearing before the Tribal Court within five (5) working days of service of the notice. The hearing shall be scheduled no later than forty (40) working days from the date the person requests a hearing; and
- c) A statement that failure to request a hearing within the time limit prescribed may result in a *Permanent Order of Exclusion* being entered.

4A.5.030 Hearings on Emergency Removals

Hearings following an emergency removal shall be conducted consistent with Sections 4A.3.070 Conduct of Hearings; 4A.3.080 Standard for Decision; 4A.3.090 Order of Exclusion; 4A.3.110 Continuance, Failure to Appear; and 4A.3.120 Order of Exclusion—Enforcement.

Chapter 4A.6 Appeal

4A.6.010 Who May Appeal Exclusion Order

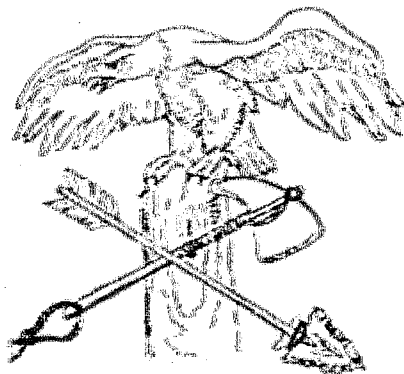
Any person subject to a Shoalwater Bay Indian Tribe exclusion or removal order may appeal the final order to the **SHOALWATER BAY COURT OF APPEALS**.

4A.6.020 Rules for Appeal

Appeals under this Title shall be governed by Title 19 of the Shoalwater Bay Code of Laws, the Appellate Code.

4A.6.030 Amendments

Any amendment to Title 4A shall only be made by the Shoalwater Bay General Council.



SHOALWATER BAY INDIAN TRIBE

P.O. Box 150 • Tokeland, Washington 98590
Telephone (360) 267-6766 • FAX (360) 267-6773

SHOALWATER BAY INDIAN TRIBE RESOLUTION 11-16-05-43

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance to their Constitution and By-Laws; and

WHEREAS, At least 25% of the Shoalwater Bay Voting Membership initiated by petition their desire to amend the Constitution of the Shoalwater Bay Indian Tribe; and

WHEREAS, The Shoalwater Bay Tribal Council provided a complete text of the proposed amendment and the Shoalwater Bay Election Board conducted an Election in accordance to the Tribal Election Ordinance in which at least 30% of the Shoalwater Bay Voting Membership participated; and

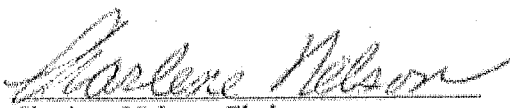
WHEREAS, The Shoalwater Bay Election Board certified that the majority of the Shoalwater Bay Voting Membership approved by ballot measure to amend the Constitution; now

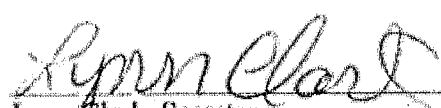
THEREBY BE IT RESOLVED That the Shoalwater Bay General Council and Tribal Council are hereby amending the Constitution of the Shoalwater Bay Indian Tribe pertaining to the Amendment to Article III, Section 6 of the Constitution to add a new subsection 6 (c):

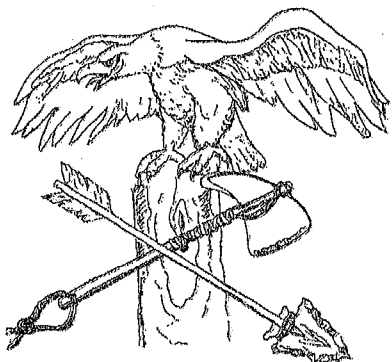
In addition to, and furtherance and implementation of, all powers currently held by the General Council or Tribal Council, the General Council shall have the power to exclude any Tribal member from the Shoalwater Bay Indian Reservation and other Tribal lands, and to enact ordinances and procedures allowing and governing the exclusion of tribal members from the Shoalwater Bay Indian Reservation and other tribal lands, under such terms and conditions as it may deem to be appropriate.

CERTIFICATION

This Resolution was passed at a Special Meeting of the Shoalwater Bay Tribal Council on November 16, 2005 at which a quorum was present. 2FOR 0AGAINST 0ABSTAIN.


Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council


Lynn Clark, Secretary
Shoalwater Bay Tribal Council



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (360) 267-6766 • FAX (360) 267-6778

To: Shoalwater Bay Tribal Council, and all Tribal Members
From: Shoalwater Bay Election Board
Date: April 17, 2006
Re: Election Certification Notice – Title 4A Exclusion of Tribal Members

A total of 60 ballots were received; 16 of those were deemed invalid due to a lack of a postmark; leaving 44 valid votes that were counted; the final results are as follows:

APPROVED 41

DISAPPROVED 3

Sincerely,

Shoalwater Bay Election Board

Leatta Anderson

Leatta Anderson, Chairperson

Carolyn Moore

Carolyn Moore, Secretary

Lisa Shipman

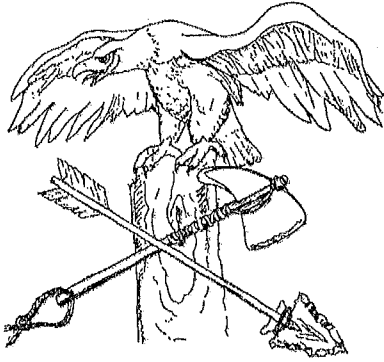
Lisa Shipman, Second Alternate

Linda Rose

Linda Rose, Vice Chairperson

Crystal Blake

Crystal Blake, First Alternate



SHOALWATER BAY INDIAN TRIBE

P.O. Box 130 • Tokeland, Washington 98590
Telephone (360) 267-6766 • FAX (360) 267-6778

SHOALWATER BAY INDIAN TRIBE RESOLUTION #07-12-06-21

WHEREAS, The Shoalwater Bay Indian Tribe is a Federally Recognized Tribe headquartered on the Shoalwater Bay Indian Reservation in the State of Washington; and

WHEREAS, The Shoalwater Bay Tribal Council is the governing body of the Shoalwater Bay Indian Tribe in accordance with the Tribal Constitution and By-Laws; and

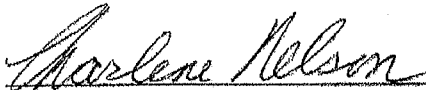
WHEREAS, The Shoalwater Bay General Council voted by ballot in accordance to the Tribe's Election Ordinance with at least 30% of the eligible voters casting ballots voting their approval to adopt Title 4A Exclusion of Tribal Members [copy attached]; and

THEREFORE BE IT RESOLVED That the Shoalwater Bay Tribal Council does hereby approve the adoption of **Title 4A Exclusion of Tribal Members**, and it is now added into the Shoalwater Bay Tribal Code of Laws.

BE IT FURTHER RESOLVED, Amendments to Title 4A may only be made by the General Council.

CERTIFICATION

This Resolution was passed at a Regular Meeting of the Shoalwater Bay Tribal Council at which a quorum was present on July 12, 2006, by a vote of: 4 FOR 0 AGAINST 0 ABSTAINING.


Charlene Nelson, Chairperson
Shoalwater Bay Tribal Council


Lynn Clark, Secretary
Shoalwater Bay Tribal Council